IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 462 OF 2001

The Commissioner of Income Tax,
Central-II, Mumbai .. Appellant

v/s.

M/s. Premier Automobiles Ltd. .. Respondent

Ms.S.V.Bharucha with Mr. K.R.Chaudhary i/by Mr. H.D.Rathod for appellant.

**CORAM : R.M.LODHA AND**
**J.P.DEVADHAR, JJ.**

**DATED : 13th August, 2004**

**P.C.**

Heard Ms. S.V.Bharucha, the learned counsel for the revenue.

2. The Tribunal considered the controversy in question thus-

> "3. During the year under consideration, assessee had received refund of Excise Duty from the Excise Department. It was observed by the AO that assessee had failed to disclose the income representing refund of excise duty and accordingly, the assessment was re-opened u/s.147 of the Act. Assessee claimed that excise duty deducted from the customer was never claimed as expenditure in any assessment and therefore, it should not be treated as income. Keeping in view the decision of the Supreme Court in the case of Chowringhee Sales Bureau, 87 ITR 542, AO held it to be taxable as trading receipt. CIT(A) confirmed the addition. In the meantime, penalty proceedings u/s.271(1)(c) were initiated for concealment of the sum of Rs.47,83,670/- being the amount of excise duty refunded. The explanation of the assessee was rejected and finally, the impugned penalty was levied.
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> 4. In the first appeal, CIT(A) upheld that it was a case of concealment of particulars of income. Nonetheless, because the

ultimate assessed income was nil, relying on the decision of Punjab & Haryana High Court in the case of CIT v. Prithipal Singh & Co., 183 ITR 69, he cancelled the penalty.

5. The addition of excise duty refunded to the assessee was a subject matter of appeal before the Tribunal in quantum proceedings in ITA Nos.8084/Bom/91 and 8917/Bom/90 for A.Ys 1981-82 and 1985-86. By its order dt. 31.1.2000, Tribunal has deleted the addition on the ground that there was no cessation of liability during the year under consideration. Since the very basis of levying penalty has disappeared, we see no reason to restore the penalty already cancelled by the CIT(A), albeit, on a different ground. Hence, the ground raised by the Department is rejected."

3. The consideration of the matter by the Tribunal cannot be said to suffer from any error of law. No substantial question of law arises. Appeal is dismissed.

**(R.M.LODHA, J.)**

**(J.P. DEVADHAR, J.)**